BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION

IN THE MATTER OF C.G., R. and A.G., Petitioners	)	NO. 04-73
VS.	)	Michael E. Spitzer Administrative Law Judge
Rutherford County Schools, Respondent	)	

O R D E R

I. PRODECURAL FACTS & HISTORY

C.G. is a 15 year old student meeting the criteria for special education services due to down syndrome and mental retardation. (T.R. p 7)

In April of 2003, an I.E.P. meeting was called and it was determined that C.G. needed to move on from junior high school at Rockdale. The parents live in the Blackman High School zone and that school was considered. The parents wanted C.G. to attend Blackman High School because it was closer to home than Riverdale High School. (T.R. pp 21-22)

However, the I.E.P. team members swayed the parents' concerns and ultimately agreed that "Riverdale would be a

better school for him because Riverdale had a better program." (T.R. p 22)

Even though the I.E.P. placed C.G. at a location outside his zone, there was some confusion about the related service of transportation. In fact, the father of C.G. transported C.G. through December of 2003. In January of 2004, after a due process request was filed, the Rutherford County Board of Education and the parties authorized an Agreed Order of Dismissal (TN Dept. of Ed #04-05) filed on February 13, 2004, in which Rutherford County Schools agreed to provide transportation.

Three months after the Order of Dismissal concerning the issue of transportation, notice was properly given and on May 20, 2004, an annual I.E.P. team meeting was called to discuss C.G.'s educational plan. (Exhibit 1, p 123)

The stated purpose of the May 20, 2004, meeting was to "review student's educational program and develop or revise an I.E.P. if needed." (Exhibit 1, p 123)

At the May 20, 2004, meeting, the goals and objectives of C.G.'s program were reviewed and discussed. The parents

voiced their concern over a lack of inclusion and wanted C.G. to participate in drama, specifically to assist in building props. As the meeting progressed, school personnel took the position that the I.E.P. goals and objectives could be met at the local school of zone, Blackman High School. It was mentioned that transportation would be provided. (Exhibit 1, p 26)

At this point, school personnel identified Blackman, rather than Riverdale, as the location at which services would be provided. The parents of C.G. became very upset and ultimately left the meeting and refused to sign the I.E.P. they had discussed and pretty much agreed upon. (Exhibit 1, p 26)

The mother of C.G. stated at the May 20, 2004, meeting that she would pull C.G. from school and home school him before she sent him to Blackman. The father of C.G. stated that C.G. was well adjusted at Riverdale and moving him to Blackman would be devastating. (Exhibit 1, p 26) It should be noted, however, that C.G. adapted quite well when moved from Rockvale to Riverdale. His father testified that C.G. had been at Rockvale “all his life” and when he

went to Riverdale, he “went right in, had no problem.” (T.R. p 54)

Based upon the May 20, 2004, I.E.P. meeting, C.G. was to be moved from Riverdale to Blackman High School for the 2004-2005 school year. (Exhibit 1, p 13) It was determined that there “was nothing in the I.E.P. that could not be implemented there.” (Blackman) (T.R. p 185) Kathy Lindlau, teacher liaison, stated, “we were offering him FAPE at this school of zone.” (p. 185)

Subsequently, the parents, wanting to keep C.G. in school of Riverdale, applied for a zone exemption (Exhibit 1, p 21). As a reason, the parents stated that C.G. is “well adjusted at Riverdale and do not think he will handle change well.” (T.R. p 35, Exhibit 1, p 21)

Rutherford County School Board Policy requires parents to provide transportation if they apply for and are granted a zone exemption. (T.R. p 132)

The zoning exemption was granted and the parents object to the requirement that they must provide transportation. The

parents feel that Riverdale meets FAPE and transportation is a required related service of that I.E.P.

The school system believes that the I.E.P. designates Blackman High School as the home school, has a sufficient program to provide FAPE, and includes the related service of special transportation. (T.R. p 130)

On November 15, 2004, the Tennessee Department of Education, Division of Special Education, received a Due Process Hearing Request filed by the parents of C.G. The request describes the problem as "failure to provide a relative service necessary for FAPE, namely Special Transportation."

II. ISSUES

a. Is Transportation a related service for attendance of C.G. at Riverdale School?

b. Does Blackman High School have sufficient programs to implement the May 20, 2004, I.E.P, of C.G.?

III. DISCUSSION

C.G. is a pleasant, outgoing, 15 year old student who resides with his parents. The parents live within the zone for Blackman High School. (T.R. p 18)

According to Kathy Lindlau, teacher liaison with the Rutherford County System, Blackman High School has eight CDC students and Riverdale High School has twelve CDC students. Each school has one teacher, provides instruction in functional reading and math; incorporates programs for self help and daily living skills; and each has a PAES lab which provides vocational training. In addition, the programs are alike in that they allow for peer tutors and have at least one educational assistant. (T.R. p 185) Each school has inclusion opportunities for C.G. (T.R. pp 201-203)

Congress enacted the *Individuals with Disabilities Act* in order to guarantee that "children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."

20 U.S.C. 1400(d) *Renner v. Board of Education,* 185 F.3d *635*

When accepting federal funds for implementation of the parameters of IDEA, the various states are required to identify, locate, evaluate, and appropriately place all disabled children who reside within their district. (20 U.S.C 1412(2)(c). Evaluations and placement in an appropriate program are an affirmative duty upon each system. (20 US.C. 1414.(1)(A)

Special education, within the meaning of the Act, is defined as being “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. . .“(20 USC 1401)

Related services are also required in order to insure that the program format can be sufficiently enhanced to be of benefit. Related services include transportation and such other corrective or supportive services as may be required to assist a student with a disability in benefiting from the special education goals and objectives as identified by the IEP team. (20 USC 1401)

An Individualized Education Program Team was created within IDEA as the necessary agent from which the individualized educational program was created, nurtured and implemented

for each student with a disability. The IEP team would create goals and objectives and make a determination of such related services as would be necessary to implement or facilitate FAPE for the student. (34 CFR 300,347)

Integral in the make-up of the IEP team is a voice for the parents of the student with a disability. It was envisioned that the parent of the student would not be a mere bystander but, in fact, an active participant in making the critical decisions necessary to provide FAPE for the student (34 CFR 300,345,501)

In *Board of Education v. Rowley*, 458 U.S. 176, it was determined that a reviewing Court must determine, in the first instance, whether or not procedural safeguards were in place prior to a decision about the education of a child with a disability.

In this case, the Rutherford County Board of Education provided an annual review notice to the parents of C.G. and requested an IEP meeting in May of 2005. The meeting was held and the parents had significant involvement. At almost every juncture, the parents provided input as to the goals of each learning activity and their desire for inclusion in

such other activities as would be possible. (Exhibit 1 p 26)

Further, the IEP team on May 20, 2005, discussed the site or location for the receipt of services and determined that transportation was a necessary component for those services at Blackman High School. The system was aware that, as a component of placement, C.G. was entitled to transportation as a related service in that transportation would assist C.G. in receiving a necessary benefit from the special education program at Blackman. (20 USC 1401)

The question in the mind of the parents is whether or not a move from Riverdale to Blackman is a change in placement. Prior to any change in placement of a student, the LEA is required to provide the parents with prior written notice of the system's intent to implement the change.

However, if the change is merely one of site or location without a fundamental change in the educational program, notice is not required. A "mere change of location without a corresponding change in services doesn't constitute a

change in the student's educational placement."

Veazey v. Ascension Parish Sch. Bd., 42 IDELR 140 (5th Cir. 2005)

The law is clear, when considering placement of a child with a disability, the LEA shall ensure that the placement decision "is as close as possible to the child's home" and "based on the child's IEP." 34 CFR 300, 552 (b)(2)(3)

Here, notice was duly given of a May 20, 2004, IEP meeting where the site for service was ultimately discussed. This was not a change in placement as the IEP was not changed. In fact, while the parents argue that the IEP cannot be fulfilled at Blackman High School, they have never allowed their son to attend that school to determine if the Blackman program provides FAPE. The student continues, under a zone exemption, to receive the implementation of his IEP at a school outside zone while on a waiver.

It is apparent from the testimony that Blackman High School has sufficient programs in place to provide FAPE. The school system recognized that transportation will be provided to Blackman.

The parents have rejected FAPE at Blackman and IDEA does not require that parents have their child's IEP met at the school of their choice.

Urban v. Jefferson County School District, 89 F. 3d 720

In rejecting the IEP created for Blackman High School and seeking and obtaining a waiver, the parents have in effect waived their right to related services, specifically transportation. While it may be determined that other related services are required for C.G., transportation to Riverdale is not one of them.

IV. CONCLUSION

Transportation is not a related service required to be provided by the LEA for C.G. at Riverdale High School.

Blackman High School is the school of zone for C.G. and his IEP can be met at Blackman.

The parents have refused to send C.G. to Blackman as identified in the IEP and have obtained a waiver. Pursuant to local policy, any parent granted an exemption of waiver must provide their own transportation.

These parents cannot on one hand reject FAPE pursuant to a well constructed IEP and then on the other hand demand related services to a program of their choice.

Enter this the _____ day of April, 2005.

_____
Michael E. Spitzer
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon Ms. Cindy Gardner, Tennessee Protection and Advocacy, Inc., 2416 21st Avenue, South, Suite 100, Nashville, TN 37212, and Ms. Angel McCloud, Attorney at Law, 2240 Southpark Blvd., Murfreesboro, TN 37128, by enclosing the same in envelopes addressed to them, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office mail box on this the _____ day of April, 2005.

_____
ADMINISTRATIVE LAW JUDGE

NOTICE

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee, or the Chancery Court in the county in which the petitioners reside or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the reviewing court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.